


Local Building or Fire Code

Board of Appeals



POWERS and DUTIES

2000

Virginia Department of Housing and Community Development
Office of the Review Board

ABSTRACT

TITLE: Powers and Duties of the Local Building or Fire Code Board of Appeals

AUTHOR: Office of the Review Board
Virginia Department of Housing and Community Development

SOURCE OF COPIES: Department of Housing and Community Development
Office of the Review Board
The Jackson Center
501 North Second Street
Richmond, Virginia 23219-1321

NUMBER OF COPIES: As Needed (2000)

ABSTRACT: A Local Board of Appeals plays an important role in the enforcement of building and fire regulations by local governments. Most members of a board of appeals, however, have little or no training in quasi-judicial proceedings or in the application of the regulations which control building construction and fire safety. This document is a technical manual to assist members of the local boards in carrying out their responsibilities.

INTRODUCTION

Local governments are required to enforce the Virginia Uniform Statewide Building Code and may enforce the Virginia Statewide Fire Prevention Code. When decisions under these codes are made by local code officials, the affected person(s) may appeal such decisions to a local board of appeals. The local board then rules whether to uphold or overturn the code official's decision. The powers and duties of the Local Board of Appeals are discussed in the following pages.

CONTENTS

	Page
APPEALS PROCESS	1
POWERS AND DUTIES OF THE LOCAL BUILDING OF FIRE CODE BOARD OF APPEALS	2
What Is a Local Building or Fire Code Board of Appeals?	2
Why Does a Local Building or Fire Code Board of Appeals Exist?	2
What Is the Legal Authority for Creating a Local Building or Fire Code Board of Appeals?	2
Who Establishes the Local Building or Fire Code Board of Appeals?	3
What Are the Powers of the Building or Fire Code Board of Appeals?	3
What Are the Administrative Responsibilities of the Local Building or Fire Code Board of Appeals?	4
What Procedures Does the Local Building or Fire Code Board of Appeals Use in Hearing an Appeal?	4
What Are the Consequences of Actions of the Local Building or Fire Code Board of Appeals?	5
Does the Virginia Freedom of Information Act and Conflict of Interest Act Affect the Local Building or Fire Code Board of Appeals?	6
APPENDIX	7
Suggested Bylaws	
Sample Form: Application for Appeal	
Sample Form: Resolution/Decision of Board	

APPEALS PROCESS

Statewide Building
And Fire
Prevention Codes

The Uniform Statewide Building Code and the Statewide Fire Prevention Code are the state regulations being enforced by the local code official.

Code Official

The local code official makes a decision under the code.

Local Building or
Fire Code
Board of Appeals

The regulated party appeals the decision of the code official to the local building or fire code board of appeals and the local board of appeals makes a ruling.

State Building Code
Technical Review
Board

The regulated party or the code official furthers the appeal to the State Building Code Technical Review Board and the State Review Board makes a ruling.

Circuit Court

The appeal is furthered to the circuit court level and the court makes a ruling.

Court of Appeals

The appeal is furthered to the Virginia Court of Appeals.

Powers and Duties of the Local Building or Fire Code Board of Appeals

1. What is a Local Building or Fire Code Board of Appeals?

A quasi-judicial body established under state law to rule on disagreements between the local enforcers of the Virginia Statewide Fire Prevention Code ("the SFPC") or the Virginia Uniform Statewide Building Code ("the USBC") and those persons being regulated under the codes.

The SFPC is a state regulation prescribing standards to be complied with for the protection of life and property from the hazards of fire or explosion and the handling, storage and use of explosives or blasting agents.

The USBC is a state regulation prescribing standards to be complied with in the construction and maintenance of buildings and structures.

The enforcement of the USBC by a local building department within each city, county and town government is mandated by state statute, while enforcement of the SFPC by local government is optional and is enforced by the Virginia State Fire Marshal's Office in those localities where there is no local enforcement.

2. Why Does a Local Building or Fire Code Board of Appeals Exist?

Disagreements inevitably arise in the enforcement of any regulation. The board of appeals is established to provide a means of having a decision of a code official (the generic name for a person responsible for enforcement of either the SFPC or USBC) reviewed by an independent body to assure that the applicable code is being properly enforced.

They are established at the local government level since the enforcement of the SFPC and the USBC is by a agency within the local government. A hearing by a local board of appeals is seen as a necessary first step in the overall appeal process (see Appeals Process, page 1).

3. What is the Legal Authority for Creating a Local Building or Fire Code Board of Appeals?

The provisions of state law relating to the USBC and appeals are set out in Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia ("the building code law"). The

provisions of state law relating to the SFPC and appeals are set out in Chapter 9 (§ 27-94 et seq.) of Title 27 of the Code of Virginia ("the fire prevention code law").

The appeals board for USBC appeals is referred to in the law as a "local board of Building Code appeals" and for SFPC appeals as a "local board of appeals." A local government enforcing both the USBC and the SFPC could use one board to serve both functions, or may have separate boards.

4. Who Establishes the Local Building or Fire Code Board of Appeals?

The building code law states, "[t]here shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the [USBC]." The fire prevention code law states that appeals shall first lie to a local board of appeals.

It is generally agreed that since the local government enforces the USBC and SFPC, that the local building or fire code board of appeals should be appointed by the local governing body, e.g., the town or city council or a board of supervisors. Both the USBC and the SFPC contain provisions establishing qualifications for board members that the local governing body should consider in making appointments. The terms of office (the length of appointment) of the board members is also determined by the appointing authority.

The local board of appeals must have at least five members, but may have more as determined by the appointing authority or through its bylaws. The appointing authority may authorize multiple boards, each to hear appeals concerning different subject matter. In that case, each such board shall independently meet all requirements for membership, etc.

5. What Are the Powers of the Local Building or Fire Code Board of Appeals?

The building code law states, "[a]ppeals from the local building department concerning application of the [USBC] or refusal to grant a modification to the provisions of the [USBC] covering the manner of construction or materials to be used in the erection, alteration or repair of a building or structure shall first lie to the local board of Building Code appeals." The fire prevention code law states, "[a]ppeals concerning the application of the [SFPC] by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board."

The power of the local board of appeals is to, when presented with an appeal, rule on the application of the SFPC or USBC by the enforcing agency or to rule on the enforcing agency's denial of a modification request.

In exercising these powers, the local board of appeals may reverse or affirm, wholly or partly, or modify any decision under review as well as to determine whether an appeal is properly before them (see Question #7).

6. What Are the Administrative Responsibilities of the Local Building or Fire Code Board of Appeals?

- A. The local board of appeals shall:
- (1) Hear appeals when properly presented;
 - (2) Keep minutes of its proceedings, which include the vote of each member on each question, and records of its deliberations and other official actions;
 - (3) File its records in the office of the board and maintain them as a public record;
 - (4) Hold meetings that are open to the public at the call of the chairman and at such other times as the board may determine; and
 - (5) Elect a chairman to preside over appeal hearings.
- B. A secretary is appointed by the local governing body or by the board to maintain a record of proceedings and to otherwise coordinate board activities.

7. What Procedures Does the Local Building or Fire Code Board of Appeals Use in Hearing an Appeal?

Many of the specific requirements are contained in the USBC and SFPC. In addition, procedures may be established by the bylaws of the board and others are standard practice for all quasi-judicial boards. Typically, there are two separate parties involved; the appealing party, and the enforcement official. An overview of a typical proceeding is set out below:

- (1) Once an appeal has been requested in writing, the board must meet within 30 days to take action on the appeal.
- (2) Notice of the meeting date is sent to those involved at least two weeks before the day of the meeting.
- (3) Suggested order of events for the hearing of an appeal is as follows:
 - a. The chairman or another member of the board should serve as a presiding officer at the appeal hearing and opens the hearing. A quorum of the board (more than half of the number of members currently appointed) must be present to conduct business.

- b. Jurisdictional issues may be raised by those involved or by members of the board and should be dispensed with prior to hearing an appeal on its merits. Jurisdictional issues are as follows:
 - 1. Whether the appealing party has a right to appeal under the regulation.
 - 2. Whether the time frame for submitting an appeal has been met.
 - 3. Whether the issue in question is appealable under the applicable regulation.
- c. If the appeal is valid jurisdictionally, the appealing party should be given an opportunity to submit any relevant documents to the board and to submit, orally or in writing, any arguments to substantiate their position in the appeal.
- d. Objections by those involved in the appeal to any proceeding or documents may be ruled on by the chairman or presiding officer.
- e. Any opposing party may cross-examine the appealing party after testimony is complete. The appealing party may then have any witnesses testify and the opposing party may cross-examine the testimony of any witnesses.
- f. The opposing party may then present any arguments or documents, or both, to the board and have any witnesses testify. Cross-examination by the appealing party is permitted after each person's testimony.
- g. Closing arguments may be permitted if warranted and the hearing then closed. Those involved should be informed that no more testimony will be taken, that deliberations will follow, and that they will be notified of the decision of the board through a written resolution (see Appendix for sample resolution).

8. What Are the Consequences of Actions of the Local Building or Fire Code Board of Appeals?

The board may uphold the decision of the code official, in which case the appealing party has a right to further the appeal to the State Building Code Technical Review Board, a governor-appointed board within the Virginia Department of Housing and Community Development. Decisions of the State Review Board are subject to court review (see Appeals Process, page 1).

The board may overturn the decision of the code official, in which case the code official may request the State Review Board to re-hear the appeal. The code official should take

action in accordance with the decision of the local board of appeals, whether it would be the withdrawal of a notice of violation or the approval of a material, operation or process.

9. **Does the Virginia Freedom of Information Act and Conflict of Interest Act Affect the Local Building or Fire Code Board of Appeals?**

The Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia) provides guidelines for public access to local board of appeals' meetings and to official records.

The Virginia Conflict of Interest Act (§ 2.1-639.1 et seq. of the Code of Virginia) provides standards of conduct for members of the local building or fire code board of appeals.

Board members should be familiar with these code sections and refer questions to the board's legal counsel as the members are subject to the provisions of both Acts.

APPENDIX

Suggested Bylaws Local Board of Appeals (substitute actual name of board)

Article 1. Officers

- 1-1. The local board of appeals shall organize; and annually elect a chairman, vice-chairman and secretary in the month of _____.
- 1-2. The chairman shall preside at meetings and hearings, shall decide points of order or procedure and shall appoint any committees that are found to be necessary.
- 1-3. The vice-chairman shall assume the duties of the chairman in the chairman's absence.
- 1-4. The secretary shall handle correspondence subject to these rules at the direction of the board; shall send out notices required by these rules; shall keep the minutes of the board's proceedings; and shall keep a file on each appeal which comes before the board.

Article 2. Meetings

- 2-1. Regular meetings of the local board of appeals for the hearing of cases shall be held on the _____ of each month at _____ .m., unless no cases are pending, in which instance no meeting shall be held.
- 2-2. Special meetings may be called by the chairman, provided at least five (5) days written notice of such meeting is given each member.
- 2-3. A majority of the board shall constitute a quorum.
- 2-4. Business conducted at meetings of the board shall follow Roberts' Rules of Order.
- 2-5. The board may adjourn a meeting if all applications or appeals cannot be disposed of on the meeting day, and no further notice shall be necessary for a continuation of such meeting.

Article 3. Procedure for Hearing Appeals

- 3-1. Appeals to the local board of appeals shall be filed with the code official on a form provided by the board. The code official shall transmit the appeal to the

secretary of the board along with all papers constituting the record of action upon which the appeal is based.

- 3-2. The applicant shall provide the secretary with all information requested on the form provided by the board and any such additional information and data as may be required to advise the board fully with reference to the application for appeal. Applications for appeal must be made on the proper form.
- 3-3. An application for appeal filed accordingly to the above shall be assigned an appeal number within five (5) days. Applications for appeals will be heard in the order they are received.
- 3-4. The secretary of the board shall schedule the appeal, notify all interested parties of the hearing and give notice including the time, date and place of the meeting to anyone requesting such information.
- 3-5. The applicant may appear in his own behalf at the hearing or may be represented by counsel or an agent.

Both the applicant and the code official may speak to the appeal and any person whose interests are affected may speak for or against the issue. The applicant shall be given an opportunity for final rebuttal.

- 3-6. The final decision on any appeal to the local board of appeals shall be in the form of a resolution approved by a quorum of the board.
- 3-7. The board shall notify the interested parties and the code official of the decision within seven (7) days after the signing of the resolution by the chairman, and in any event, within fourteen (14) days after the meeting in which the decision is made and within sixty (60) days of the date on which the application for appeal was filed.

Article 4. Records

- 4-1. A complete file on each appeal shall be kept by the secretary as part of the records of the local board of appeals.
- 4-2. All records of the board shall be public records.

Attest: _____

Chairman

Secretary

Appeal No. _____

Application for Appeal

Locality

I (we) _____ of _____
(name) (mailing address)

respectfully request that the Local Board of Appeals review the decision made on _____, 2000__ by the code official.

Description of Decision Being Appealed: _____

Location of Property Involved: _____

What is the applicant's interest in the property?

☐ owner

☐ contractor

☐ owner's agent

☐ other (explain) _____

Relief Sought: _____

Attach the Decision of the Code Official and Any Other Pertinent Documents.

Signature of Applicant

Filed at _____, Virginia, the ____ day of _____, 200 ____

Sample Resolution

WHEREAS, the _____ Local Board of Appeals is duly appointed to resolve disputes arising out of enforcement of the _____ code; and

WHEREAS, an appeal has been filed and brought to the attention of the board of appeals; and

WHEREAS, a hearing has been held to consider the aforementioned appeal; and

WHEREAS, the board has fully deliberated this matter; now, therefore, be it

RESOLVED, That in the matter of

Appeal No. _____

IN RE: _____ v. _____

The appeal is hereby _____, for the reasons set out below:

Date: _____

Signature _____
Chairman of Local Board of Appeals

Note: Further appeal may be made to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 501 North Second Street, Richmond, Virginia 23219.